IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 410 of 1980

with

SECOND APPEAL No 411 of 1980

and

SECOND APPEAL No 412 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

PATEL KANJI PREMJI

Versus

PATEL LADHA HIRA

Appearance:(In all these three appeals)

MR MEHUL S SHAH for Appellant

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/06/98

ORAL JUDGEMENT

1. Learned counsel for the appellant submitted that identical issue has arisen in all these three appeals and

as such he requested that the same may be taken up for hearing and decided by a common order. Request made by the learned counsel for the appellant is granted.

2. Learned counsel for the appellant has made the submissions with regard to second appeal No.410/80 and as such the facts giving rise to that appeal are as under:

3. The plaintiff-respondent is doing agriculture in village Banga and defendant-appellant is also an agriculturist and does the business of producing and selling ground nut. The plaintiff-respondent had sold his crop of ground nut to the defendant on credit and the price of that ground nut sold to the defendant remained due and the plaintiff was demanding those dues repeatedly and the defendant was giving promise that he would pay the dues later on. The defendant-appellant had passed writing in favour of the plaintiff-respondent that the amount of Rs.5789/- towards the price of ground nut was due by him to the plaintiff, in the month of January, 1975 on non-judicial stamp paper No.1547 purchased by the plaintiff on 22-1-1975. That writing on the stamp paper was executed by the defendant in his own handwriting and he had put signature below that writing. After that writing, the plaintiff demanded those dues repeatedly and ultimately he sent a notice also on 26-5-1977 to the defendant demanding those dues. This notice was sent by registered post A.D. and despite of the receipt of the said notice, the amount has not been paid to the plaintiff. Thus the plaintiff-respondent filed the suit claiming Rs.5789/- as principal sum for which the writing was passed and the sum of Rs.1823-53ps. as damages of interest at the rate of 12% p.a. sum for a period of 31 months and 15 days i.e. from 23-1-1975 to 8-9-1977 and Rs.22-50 as expenses of notice. Thus the total claim of the plaintiff-respondent in the suit was for Rs.7635-03ps. The plaintiff-respondent also prayed for future interest and the costs of the suit.

4. The defendant-appellant has contested the suit of the plaintiff-respondent by filing written statement at Ex.20 on 26-10-1975 and he denied the writing on which the suit of the plaintiff is based. Further other defences have also been taken by the defendant-appellant in the suit.

5. On the basis of the pleadings of the parties, the learned trial Judge framed issues at Ex.21 and after recording the evidence of both the parties, he was pleased to dismissed the suit of the plaintiff-respondent by holding that the plaintiff-respondent had failed to

prove that Rs.7635-03ps were due to him by the defendant-appellant as alleged in the plaint. The suit was held to be beyond limitation also.

6. The plaintiff-respondent being felt aggrieved of the judgment and decree of the trial Court, preferred first appeal and the first appellate court under its judgment and decree dated 30th June, 1980 allowed the appeal and the suit of the plaintiff-respondent was decreed for Rs.7612-53ps with simple interest at the rate of 6% p.a. on the principal amount. Hence, this second appeal by the defendant-appellant before this Court.

7. Learned counsel for the appellant contended that the learned first appellate court has committed serious error of jurisdiction in entering into the exercise of comparing the handwriting of the defendant-appellant in the suit - document Ex.29 and in the A.D. Ex.31 specifically when the trial court on specific comparison of the suit document had reached to the conclusion that the document Ex.29 has not been executed by the defendant-appellant. Carrying this contention further, learned counsel for the appellant submitted that the decree, passed by the first appellate court is solely based on the comparison of the handwriting of the defendant-appellant on the document Ex.29 with his signature in the A.D. receipt of the notice sent to him by the plaintiff-respondent, Ex.31 may not be maintained by this Court. It is the job of experts to compare the handwritings of the disputed document and the court, what the learned counsel for the appellant urged, should not have ordinarily undertaken this exercise.

8. I have given my thoughtful consideration to the aforesaid submissions made by the learned counsel for the appellant.

9. From the perusal of the judgment of the first appellate court, I find that the first appellate court has not passed the decree in favour of the plaintiff-respondent only on the basis of comparison of the handwriting of the defendant in the document Ex.29 with his handwriting in the document Ex.31. The trial court while dismissing the suit of the plaintiff-respondent has taken into consideration the fact that on comparison of the signatures of the defendant, appellant herein, in the document Ex.29 with his signature in the document Ex.31, the same were not tallying. Ordinarily, the courts should not have undertaken this task of comparing of the handwriting of the disputed document with the admitted signatures as it

is a matter of experts' opinion but in the case in hand, where the defendant-respondent has persuaded the trial court to enter into such a comparison and in fact the trial court has entered into such comparison and has recorded a finding also that the signature on the document Ex.29 is not that of the defendant and if this exercise has been undertaken by the appellate court in this case, then the defendant cannot take any exception to the same. Be that as it may. As I have stated earlier, it is not the case where the first appellate court has passed its decision only on comparison of the disputed signature of the defendant-appellant on the document Ex.29 with his signature on the document Ex.31. The first appellate court has considered the evidence of the plaintiff himself who had very categorically stated that the defendant-appellant has executed the document Ex.29. It is true that the defendant has denied the execution of the document Ex.29. So it is a case where there is oath against oath and the first appellate court has to consider which of the evidence has to be accepted. Whether the document Ex.29 has been executed by the defendant or not - is a pure question of fact and on the basis of the assessment of the evidence which has been produced by both the parties in the case, the learned first appellate court has to decide that the case of which of the party has to be accepted. The learned first appellate court has not only passed its decision, as I have stated earlier, on the comparison of the signature of the defendant in the document Ex.29 but in addition to that it has considered the evidence of the plaintiff-respondent and has also further given out the circumstances which goes in favour of the plaintiff-respondent.

10. Learned counsel for the appellant, on being asked by the court, has admitted that there was no enmity in between the plaintiff and the defendant, and as such, the learned first appellate court has rightly observed that in such circumstances, it is difficult to say that the plaintiff-respondent has filed false case against the defendant-appellant. The first appellate court has also considered the further circumstance i.e. the defendant-appellant has not responded to the notice which has been sent by the plaintiff-respondent demanding the amount in dispute from him. In view of the fact that the defendant-appellant has not any enmity or there is no any ill motive of filing of the suit by the plaintiff-respondent against him and further the conduct of the defendant-appellant that he has not replied to the notice of the plaintiff and the plaintiff has only filed the suit after he has not even received the reply of the

notice, the learned first appellate court after taking into consideration all these circumstances rightly decreed the suit against the plaintiff respondent, and in such case, it cannot be said that it has acted illegally or it could not have taken this evidence into consideration.

11. Taking into consideration the totality of the facts of this case, the learned first appellate court has not committed any error or illegality in passing of the decree in favour of the plaintiff-respondent. The contention of the learned counsel for the appellant that it is case where the decree has been passed only on the comparison of the disputed signature of the document Ex.29, is without any substance. The learned first appellate court, after taking into consideration the evidence produced by the plaintiff, has recorded a finding of fact and even if two views are taken on the basis of one set of evidence then sitting under section 200 of the Code of Civil Procedure, 1908, this Court will not interfere in the matter.

12. The net result of the aforesaid discussion is that the learned counsel for the appellant is unable to make out any case that in the second appeal any question of law much less a substantial question of law has arisen.

13. No other point has been raised by the learned counsel for the appellant in these appeals.

14. In the result, all these second appeals fail and the same are dismissed. Interim relief, if any, granted by this Court in these appeals stand vacated. No order as to costs.

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